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 INC., and TIFFANY NGO D/B/A SPEEDY  
 WASH

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

SOCHEAT CHY,

Plaintiff,

v.

LAM SIN YAM;  
 RAY LIM;  
 TIFFANY NGO;  
 NGO ASSET MANAGEMENT, LLC;  
 TIFFANY NGO IN HER CAPACITY  
 AS TRUSTEE OF THE TIFFANY  
 NGO LIVING TRUST UTD;  
 NAING LAM YAM;  
 CINDY KANYA CHAN;  
 MOLICA RATHA KEO;  
 NIVODETH KHIEV;  
 CRUISE THRU DAIRY, D/B/A  
 CRUISE THRU DAIRY;  
 VALERO MART INC., D/B/A  
 VALERO MART/ARCO MARKET  
 INC.; and  
 TIFFANY NGO, D/B/A SPEEDY  
 WASH,

Defendants.

Case No. 2:17-cv-04325-BRO-AGR

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 THE MOTION OF DEFENDANTS  
 LAM SIN YAM; RAY LIM;  
 TIFFANY NGO; NGO ASSET  
 MANAGEMENT, LLC; TIFFANY  
 NGO IN HER CAPACITY AS  
 TRUSTEE OF THE TIFFANY NGO  
 LIVING TRUST UTD; CRUISE  
 THRU DAIRY D/B/A CRUISE  
 THRU DAIRY; VALERO MART  
 INC. D/B/A VALERO MART/ARCO  
 MARKET INC.; AND TIFFANY  
 NGO D/B/A SPEEDY WASH TO  
 DISMISS PLAINTIFF'S FOURTH,  
 SEVENTEENTH, TWENTY-  
 SECOND, AND TWENTY-NINTH  
 CLAIMS FOR RELIEF FOR  
 FAILURE TO STATE A CLAIM  
 (F.R.C.P. 12(b)(6))**

Hearing Date: November 6, 2017  
 Time: 1:30 P.M.  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On June 9, 2017<sup>1</sup>, the Plaintiff SOCHEAT CHY (“Socheat” and/or “Plaintiff”) filed a complaint against Defendants LAM SIN YAM (“Sin”), RAY LIM (“Lim”), TIFFANY NGO (“Ngo”), NGO ASSET MANAGEMENT, LLC. (“NAM”), TIFFANY NGO IN HER CAPACITY AS TRUSTEE OF THE TIFFANY NGO LIVING TRUST UTD (“TNLT”), CRUISE THRU DAIRY D/B/A CRUISE THRU DAIRY (“CTD”), VALERO MART INC. D/B/A VALERO MART/ARCO MARKET INC. (“Valero”) and TIFFANY NGO D/B/A SPEEDY WASH (“Speedy Wash”) (collectively “Defendants”), and others, seeking damages and other relief based on Defendants’ allegedly subjecting Socheat to forced labor in their businesses and homes in Southern California during the period of June 2013 through September 28, 2015. (Second Amended Complaint (“SAC”), ¶¶ 1, 21-83.) Socheat’s forced labor is alleged to have occurred during the period of June 2013 through October 2013 when Socheat allegedly voluntarily left and stayed with her husband, NAING LAM YAM (“Yam”), for six months, only to voluntarily return to Defendants and allegedly be subjected to further forced labor by Defendants during the period of April 2014 through September 28, 2015. (SAC, ¶¶ 66-77.)

Based in part upon these allegations, Socheat has alleged, as against all Defendants, a Fourth Claim for Relief (Unlawful Conduct Re: Documents – taking of her passport), a Seventeenth Claim for Relief (False Imprisonment), a Twenty-Second Claim for Relief (Negligent Infliction of Emotional Distress), and a Twenty-Ninth Claim for Relief (Violations of the Federal Racketeer Influenced and Corrupt Organizations Act (“RICO Claim”)), each of which is the subject of the within Federal Rules of Civil Procedure (“F.R.C.P.”) 12(b)(6) motion.

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<sup>1</sup> The complaint was later amended by First Amended Complaint and then by Second Amended Complaint, which is the subject of this motion.

1 By this Motion, Defendants, except Sin, seek dismissal of the Fourth Claim  
2 for Relief of Unlawful Conduct Re: Documents, because only Sin is alleged to have  
3 taken and withheld Socheat's passport.

4 Further, Defendants seek dismissal of the Seventeenth Claim for Relief of  
5 False Imprisonment because it is barred by the one-year statute of limitations under  
6 *California Code of Civil Procedure* ("CCP") § 340(c), since Socheat's complaint  
7 was filed on June 9, 2017, more than one year after termination on September 28,  
8 2015, of Socheat's alleged false imprisonment.

9 Defendants also seek dismissal of the Twenty-Second Claim for Relief of  
10 Negligent Infliction of Emotional Distress because there is no independent tort for  
11 negligent infliction of emotional distress.

12 Finally, the recently added Twenty-Ninth RICO Claim should be dismissed  
13 under F.R.C.P. 12(b)(6) because Socheat has not alleged a "pattern of racketeering  
14 activity" as necessary to state a claim for violation of 18 U.S.C. § 1962(c) and 18  
15 U.S.C. § 1962(d).

16 Dismissal of each of these identified claims for relief should be without leave  
17 to amend, because Socheat cannot cure the pleading defects. Indeed, Socheat was  
18 given numerous opportunities, through the Local Rule 7-3 meet and confer process,  
19 to cure these material defects. Instead, Socheat chose to stand on her pleadings.

20 **II. STATEMENT OF THE RELEVANT PORTIONS OF THE SECOND**  
21 **AMENDED COMPLAINT**

22 Plaintiff Socheat is married to Defendant Yam<sup>2</sup> and the sister-in-law of  
23 Defendant Sin.<sup>3</sup> (SAC, ¶¶ 7-8.) Plaintiff allegedly immigrated, with her husband  
24 Yam, from Cambodia to the United States on June 11, 2013, and began living with  
25 Sin and other relatives at that time. (SAC, ¶ 44.) Although, Plaintiff's counsel has  
26

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27 <sup>2</sup> Yam is not a party to this Motion.

28 <sup>3</sup> Plaintiff is correspondingly related by marriage to various other defendants as  
well.



1 taken considerable artistic license with the other voluminous allegations set forth in  
 2 the Second Amended Complaint, that is an evidentiary fight for another day. For  
 3 purposes of this motion, which is directed at only four specific causes of action, the  
 4 pertinent allegations of the SAC are alleged as follows:

5 **A. AS RELATES TO THE FOURTH CLAIM FOR RELIEF**  
 6 **(UNLAWFUL CONDUCT RE: DOCUMENTS)**

7 Only Defendant Sin – and no one else – is alleged to have taken and/or  
 8 possessed Plaintiff’s passport. As set forth in the one paragraph that mentions this  
 9 supposed incident: “...Defendant Sin demanded that Socheat give Sin her passport.  
 10 Socheat did not understand why Defendant Sin needed her passport, but she  
 11 complied because she was scared.” (SAC, ¶ 45.) There are no allegations that  
 12 anyone else: (1) was present when Plaintiff purportedly gave her passport to Sin;  
 13 (2) had any knowledge of this event; and/or (3) had any involvement with this event.

14 **B. AS RELATES TO THE SEVENTEENTH CLAIM FOR RELIEF**  
 15 **(FALSE IMPRISONMENT)**

16 Plaintiff was purportedly “rescued” (from the home in which she paid no rent  
 17 and all her meals were provided) on September 28, 2015, considerably more than a  
 18 year before the original complaint in this case was filed on June 9, 2017.<sup>4</sup> (SAC, ¶  
 19 83.)

20 **C. AS RELATES TO THE TWENTY-SECOND CLAIM FOR RELIEF**  
 21 **(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)**

22 Both the Twenty-Second Claim for Relief (Negligent Infliction of Emotional  
 23 Distress) and the Twentieth Claim for Relief (Negligence) allege the same duty,  
 24 breach, and emotional distress damages. (SAC, ¶¶ 205-210, 215-218.) Further, the  
 25  
 26

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27  
 28 <sup>4</sup> A Request for Judicial Notice of the date of the filing of Plaintiff’s original  
 complaint is filed concurrently herewith.



1 Twenty-Second Claim for Relief is not recognized by law as an independent tort  
2 claim.

3 **D. AS RELATES TO THE TWENTY-NINTH CLAIM FOR RELIEF**  
4 **(VIOLATIONS OF THE FEDERAL RACKETEER INFLUENCED**  
5 **AND CORRUPT ORGANIZATIONS ACT)**

6 Plaintiff alleges that her cumulative stay with Defendants – approximately  
7 four (4) months (June-October 2013) followed by an (excluded) period of six (6)  
8 months, in which she lived with her husband Yam (SAC, ¶¶ 66, 71), followed by her  
9 return to the Defendants’ home for an additional approximate eighteen (18) months  
10 – somehow during which Defendants are alleged to have committed two or more  
11 predicate acts based on a single action or set of actions of forced labor violating 18  
12 U.S.C. §§ 1584, 1589, 1590, and 1592, constitutes a “pattern of racketeering  
13 activity.” (SAC, ¶¶ 272-285.) As set forth herein, it does not.

14 **III. LEGAL ANALYSIS**

15 **A. STANDARDS GOVERNING F.R.C.P. 12(b)(6) MOTIONS TO**  
16 **DISMISS**

17 In ruling on a Motion to Dismiss pursuant to F.R.C.P. 12(b)(6), the Court  
18 generally must: (1) construe the complaint in the light most favorable to the  
19 plaintiff; (2) accept all well-pleaded factual allegations as true; and (3) determine  
20 whether the plaintiff can prove any set of facts to support a claim that would merit  
21 relief. (*Cahill v. Liberty Mutual Ins. Co.* (9th Cir. 1996) 80 F.3d 336, 337-38.)  
22 However, the Court need not accept as true “conclusory allegations” or  
23 “unreasonable inferences” in ruling on a F.R.C.P. 12(b)(6) motion. (*Transphase*  
24 *Systems, Inc. v. Southern California Edison Co.* (C.D. Cal. 1993) 839 F.Supp. 711,  
25 718.) “Conclusory allegations of law and unwarranted inferences are insufficient to  
26 defeat a motion to dismiss for failure to state a claim.” (*Epstein v. Washington*  
27 *Energy Co.* (9th Cir. 1996) 83 F.3d 1136, 1140.) “We are not bound, however, to  
28 credit ‘bald assertions, unsupportable conclusions, and opprobrious epithets’ woven

1 into the fabric of the complaint.” (*In re Colonial Mortgage Bankers Corp.*, (1st Cir.  
2 2003) 324 F.3d 12, 15.) “Factual allegations must be enough to raise a right to relief  
3 above the speculative level.” (*Bell Atlantic Corp. v. Twombly* (2007) 55 U.S. 544,  
4 555; 127 S.Ct. 1955, 1959.) “Where a complaint pleads facts that are ‘merely  
5 consistent with’ a defendant’s liability, it ‘stops short of the line between possibility  
6 and plausibility of ‘entitlement to relief.’” (*Ashcroft v. Iqbal* (2009) 556 U.S. 662,  
7 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, quoting *Twombly* at 570.) A  
8 complaint must set forth “enough facts to state a claim to relief that is plausible on  
9 its face. Because the plaintiffs here have not nudged their claims across the line  
10 from conceivable to plausible, their complaint must be dismissed.” (*Twombly*,  
11 *supra*, 55 U.S. at 570.) “In keeping with these principles a court considering a  
12 motion to dismiss can choose to begin by identifying pleadings that, because they  
13 are no more than conclusions, are not entitled to the assumption of truth.” (*Iqbal*,  
14 *supra*, 556 U.S. at 679.)

15 A F.R.C.P. 12(b)(6) motion is proper where the plaintiff has included  
16 allegations that, on their face, disclose some absolute defense or bar to recovery.  
17 (*Weisbuch v. County of Los Angeles* (9th Cir. 1997) 119 F.3d 778, 783 n.1 (“If the  
18 pleadings establish facts compelling a decision one way, that is as good as if  
19 depositions and other expensively obtained evidence on summary judgment  
20 establishes the identical facts.”).) The Court may also properly consider judicially  
21 noticeable facts that contradict the plaintiff’s allegations. (*Mullis v. United States*  
22 *Bankruptcy Court* (9th Cir. 1987) 828 F.2d 1385, 1388.)

23 A 12(b)(6) motion may properly seek to dismiss only part of a claim. (*Hill v.*  
24 *Opus Corp.* (C.D. Cal. 2011) 841 F.Supp. 2d 1070, 1082 (“plaintiffs’ state law  
25 claims seeking compensation under ERISA-covered plans are separable from their  
26 claims seeking compensation under non-covered plans”).)

27 Leave to amend is properly denied where it is clear that the defects in the  
28 pleading cannot possibly be cured by new factual allegations and/or if the Plaintiff

1 has failed to cure the pleading defects by prior amendments. (*Abagninin v. AMVAC*  
2 *Chem. Corp.* (9<sup>th</sup> Cir. 2008) 545 F.3d. 733, 742.)

3 For the reasons stated herein, the Fourth, Seventeenth, Twenty-Second, and  
4 Twenty-Ninth Claims for Relief, and each of them, should be dismissed without  
5 leave to amend, because these claims cannot be cured by an amendment.

6 **B. THE FOURTH CLAIM FOR RELIEF OF UNLAWFUL**  
7 **CONDUCT RE: DOCUMENTS FAILS TO STATE A CLAIM**  
8 **UPON WHICH RELIEF CAN BE GRANTED AS AGAINST ALL**  
9 **DEFENDANTS EXCEPT SIN, BECAUSE ONLY SIN IS**  
10 **ALLEGED TO HAVE TAKEN AND WITHHELD SOCHEAT’S**  
11 **PASSPORT**

12 The Fourth Claim for Relief (Unlawful Conduct Re: Documents – 18 U.S.C.  
13 §§ 1592, 1595(a)), is alleged against all Defendants.

14 18 U.S.C. § 1592 states in this regard:

15 “Whoever knowingly destroys, conceals, removes, confiscates, or  
16 possesses any actual or purported passport or other immigration  
17 document, or any other actual or purported government identification  
document, of another person--

- 18 • (1) in the course of a violation of section 1581, 1583, 1584, 1589,  
19 1590, 1591, or 1594(a) [18 U.S.C. § 1581, 1583, 1584, 1589, 1590,  
20 1591, or 1594(a)];
- 21 • (2) with intent to violate section 1581, 1583, 1584, 1589, 1590, or  
22 1591 [18 U.S.C. § 1581, 1583, 1584, 1589, 1590, or 1591]; or
- 23 • (3) to prevent or restrict or to attempt to prevent or restrict,  
24 without lawful authority, the person's liberty to move or travel, in  
25 order to maintain the labor or services of that person, when the  
26 person is or has been a victim of a severe form of trafficking in  
persons, as defined in section 103 of the Trafficking Victims  
Protection Act of 2000 [22 U.S.C. § 7102], shall be fined under  
this title or imprisoned for not more than 5 years, or both.” (18  
U.S.C. § 1592 (LexisNexis, Lexis Advance through PL 115-51,  
approved 8/18/17, with a gap of PL 115-50))

27 ///

28

Further, 18 U.S.C. § 1592 provides in pertinent part:

“An individual who is a victim of a violation of this chapter [18 U.S.C. §§ 1581 et seq.] may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter [18 U.S.C. §§ 1581 et seq.]) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.” (18 U.S.C. § 1595 (LexisNexis, Lexis Advance through PL 115-51, approved 8/18/17, with a gap of PL 115-50))

18 U.S.C. § 1592 clearly only applies to a person who “knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport ... of another person.”

The only person alleged (albeit incorrectly) to have had any involvement in possession of Plaintiff’s passport is Sin. (SAC, ¶ 45.) The Second Amended Complaint, paragraph 45, states in this regard, “On Socheat’s first full day in the United States, Defendant Sin began manipulating Socheat with threats and coercion. At Defendant Ngo’s residence, Defendant Sin demanded that Socheat give Defendant Sin her passport. Socheat did not understand why Defendant Sin needed her passport, but she complied because she was scared.”

Accordingly, Defendants ask that the Defendants Ngo, Lim, NAM, TNLT, CTD, Valero, and Speedy Wash, and each of them, be dismissed from this claim for relief. Further, since Socheat cannot contradict her allegations of her Original, First, and Second Amended Complaint, to allege that any of the Defendants, other than Sin, participated in the alleged wrongful taking and possessing of Socheat’s passport, the order of dismissal should be entered without leave to amend. (*Abagninin v. AMVAC Chem. Corp.*, *supra*, 545 F.3d. at 742 – denial of leave to amend is proper where plaintiff failed to cure pleading defects by prior amendments.)

**C. THE SEVENTEENTH CLAIM FOR RELIEF OF FALSE IMPRISONMENT SHOULD BE DISMISSED BECAUSE IT IS BARRED BY THE ONE-YEAR STATUTE OF LIMITATIONS (CCP § 340(c))**

Socheat has alleged, by her Seventeenth Claim for Relief, that Defendants detained her against her will from June 2013 through September 28, 2015.

CCP § 340(c), governing herein Plaintiff's claims for false imprisonment, requires that the action for false imprisonment be filed within one year of the termination of the alleged imprisonment. An action for false imprisonment accrues upon termination of the imprisonment. (*Collins v. County of Los Angeles* (1966) 241 Cal.App.2d 451, 454, 50 Cal.Rptr. 586, 588.)

The original complaint alleging the Seventeenth Claim for Relief of False Imprisonment was filed on June 9, 2017<sup>5</sup>, more than one year after Socheat allegedly escaped on September 28, 2015, from her alleged wrongful detention.

Socheat does not allege that said one-year statute of limitations was equitably tolled by any events or circumstances. Moreover, under *Bureerong v. Uvawas* (C.D. Cal. 1996) 922 F.Supp. 1450, 1463, and *Hernandez v. Attisha* (S.D. Cal. 2010) 2010 U.S. Dist. LEXIS 20235, 2010 WL 816160 (human trafficking), the California equitable tolling doctrine only covers that period that the plaintiff was detained.

As such, the Seventeenth Claim for Relief of False Imprisonment fails to state a claim for relief as against these Defendants and, therefore, should be dismissed. (F.R.C.P. 12(b)(6).) Further, since Socheat has not and cannot, by an amendment<sup>6</sup>, plead around the bar of the statute of limitations under CCP § 340(c), an order of

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<sup>5</sup> Concurrently filed herewith is a Request for Judicial Notice of the June 9, 2017 date of Socheat filing the within action.

<sup>6</sup> Socheat did not, by her First and/or Second Amended Complaint, despite an opportunity to do so, allege any facts that would support equitable tolling of the one-year statute of limitations.

1 dismissal without leave to amend is proper. (*Abagninin v. AMVAC Chem. Corp.*,  
2 *supra*, 545 F.3d. at 742.)

3       **D. THE TWENTY-SECOND CLAIM FOR RELIEF OF**  
4       **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**  
5       **FAILS TO STATE A CLAIM FOR RELIEF BECAUSE IT IS**  
6       **NOT, AS A MATTER OF LAW, RECOGNIZED AS AN**  
7       **INDEPENDENT TORT, AND IS OTHERWISE REDUNDANT**  
8       **OF SOCHEAT’S TWENTIETH CLAIM FOR RELIEF FOR**  
9       **NEGLIGENCE**

10       Socheat seeks, by her Twenty-Second Claim for Relief, damages based on  
11 allegations of negligent infliction of emotional distress arising from the Defendants’  
12 allegedly forcing Socheat to work for them, while allegedly denying Socheat the  
13 protection allegedly guaranteed her under the California Labor Code. Notably,  
14 Socheat also has included in her Second Amended Complaint a Twentieth Claim for  
15 Relief for Negligence, whereby she seeks identical emotional distress damages also  
16 based on the allegations she has incorporated from her Twentieth Claim for Relief  
17 of Negligence. (SAC, ¶¶ 205-210, 215-218.)

18       The law is clear, “**there is no independent tort of negligent infliction of**  
19 **emotional distress,**” (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965,  
20 984-985.) (Emphasis added.) Instead, any claim for negligent infliction of emotional  
21 distress must be alleged as part of Socheat’s Twentieth Negligence Claim for Relief.  
22 As the California Supreme Court stated in *Potter*, “... there is no independent tort of  
23 negligent infliction of emotional distress. (Citations.) The tort is negligence, a cause  
24 of action in which a duty to the plaintiff is an essential element. (Citations) That  
25 duty may be imposed by law, be assumed by the defendant, or exist by virtue of a  
26 special relationship. (Citations)” (See also *Burgess v. Superior Court* (1992) 2  
27 Cal.4th 1064, 1073.)

28



1 Accordingly, the redundant and improper Twenty-Second Claim for Relief  
2 should be dismissed without leave to amend for failure to state a claim as a matter of  
3 law. (F.R.C.P. 12(b)(6).) Socheat cannot, by amendment, plead a claim for relief of  
4 negligent infliction of emotional distress because it is otherwise prohibited by law.

5 **E. THE TWENTY-NINTH RICO CLAIM FOR RELIEF SHOULD BE**  
6 **DISMISSED BECAUSE SOCHEAT HAS FAILED TO ALLEGE A**  
7 **“PATTERN OF RACKETEERING ACTIVITY”**

8 Socheat has filed a Twenty-Ninth Claim for Relief against Defendants based  
9 on alleged violations of the Federal Racketeer Influenced and Corrupt Organizations  
10 Act under 18 U.S.C. § 1962(c) and 18 U.S.C. § 1962(d) for conspiracy to violate 18  
11 U.S.C. § 1962(c) (“RICO Claim”),<sup>7</sup> alleging in pertinent part:

12 “281. RICO Defendants used the RICO Enterprise to engage in  
13 related and continuous predicate acts, which are defined in 18 U.S.C.  
14 § 1961(1), as set forth below.

15 282. 18 U.S.C. § 1961(1) defines ‘racketeering activity’ to  
16 include violations of 18 U.S.C. § 1584 (involuntary servitude), 18  
17 U.S.C. § 1589 (forced labor), 18 U.S.C. § 1590 (trafficking with  
18 respect to peonage, slavery, involuntary servitude or forced labor),  
19 and 18 U.S.C. § 1592 (unlawful conduct with respect to documents in  
20 furtherance of trafficking, peonage, slavery, involuntary servitude or  
21 forced labor).

22 283. The RICO Defendants’ violations of 18 U.S.C. §§ 1584,  
23 1589, 1590, and 1592 constitute racketeering activity.

24 284. ‘Pattern of Racketeering activity’ is defined in 18 U.S.C. §  
25 1961(5) as requiring at least two acts of racketeering activity, where  
26 the last act must occur within ten years after commission of a prior act  
27 of racketeering activity.

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28 <sup>7</sup> As noted *supra*, Socheat does not specifically identify, by her Twenty-Ninth  
Claim for Relief, the specific subsections of 18 U.S.C. § 1962 which she alleges  
Defendants have violated. Through the meet and confer process, however, Plaintiff  
confirmed that the jurisdictional allegations of the Second Amended Complaint (SAC, ¶2)  
reflect that Socheat’s RICO Claim is limited to alleged violations of 18 U.S.C. § 1962(c)  
and 18 U.S.C. § 1962(d) for conspiracy to violate 18 U.S.C. 1962(c). Based thereon, the  
Motion to Dismiss the Rico Claim is limited to addressing these subsections.





1           **1. Socheat Has Failed To Allege Two Or More Predicate Acts As**  
2           **Necessary For Establishing A “Pattern Of Racketeering Activity”.**

3           A “**pattern of racketeering activity**” exists when a person commits or aids  
4 in **two or more predicate acts that are sufficiently connected to pose a threat of**  
5 **continued criminal activity.** (18 U.S.C § 1961(5); *H.J. Inc. v. Northwestern Bell*  
6 *Tel. Co.* (1989) 492 U.S. 229, 232; *Allwaste, Inc. v. Hecht* (9th Cir. 1995) 65 F.3d  
7 1523, 1528.)

8           **a. Socheat’s Allegations of a Single Action Violating 18 U.S.C. §§ 1584,**  
9           **1589, 1590, and 1592, Constitutes a Single Predicate.**

10           When a single action violates more than one of the statutes recited in  
11 **Section 1961(1), it constitutes only a single predicate act for RICO purposes,**  
12 **not multiple predicate acts.** (*United States v. Walgren* (9th Cir. 1989) 885 F.2d  
13 1417, 1425-1426.)

14           In *Walgren*, the Ninth Circuit held that the plaintiff failed to plead two  
15 predicate acts, where only a single action was alleged, noting in pertinent part, “We  
16 agree with the defendants that it is not proper under RICO to charge two predicate  
17 acts where one action violates two statutes. **A pattern of racketeering activity**  
18 **requires ‘at least two acts of racketeering,’ 18 U.S.C. § 1961(5) (emphasis**  
19 **added), not ‘at least two statutory offenses.’** We do not think that the factor of  
20 “continuity plus relationship” *Sedima*, 473 U.S. at 496 n. 14, . . . quoting S.Rep.  
21 No. 91-617, 91st Cong., 1st Sess. 158 (1969) (emphasis added), which Congress  
22 thought necessary to establish a pattern, can be present where only a single act,  
23 albeit an act that violates two statutes, has been committed.” (*Id.* 1425-1426.)  
24 (Emphasis added.)

25           Socheat’s RICO Claim is limited to a single action of Defendants’ alleged  
26 forced labor upon Socheat, which Socheat alleges violates 18 U.S.C. §§ 1584, 1589,  
27 1590, and 1592, as specifically identified in 18 U.S.C. § 1961(5). (SAC, ¶¶ 281-  
28 285.) As such, Socheat’s RICO Claim fails as a matter of law because Socheat has

1 not alleged two or more predicate acts (*Id.*) Dismissal of Socheat's RICO Claim is,  
2 therefore, proper. (F.R.C.P. 12(b)(6).)

3 **b. Socheat Cannot Fragment a Single Action to Create Multiple**  
4 **Predicates.**

5 Socheat may not, by amendment to her Second Amended Complaint,  
6 fragment by Socheat's six (6) month visit with her husband, the alleged single action  
7 of forced labor to create two predicate acts. (See *Polycast Technology Corp. v.*  
8 *Uniroyal, Inc.* (S.D.N.Y. 1989) 728 F.Supp. 926, wherein the court noted the  
9 Second Circuit's warning in *United States v. Indelicato*, 865 F.2d 1370 (2d Cir.) (en  
10 banc), cert. denied, 491 U.S. 907 (1989), that "it would 'disapprove any attempt by  
11 the government or a private plaintiff to go beyond Congress' intent and fragment an  
12 act that is plainly unitary into multiple acts in order to invoke RICO'") In *Polycast*  
13 *Technology Corp. v. Uniroyal, Inc.*, the court held that defendants' single set of  
14 fraudulent statements, allegedly producing two statutory violations, cannot be split  
15 into two separate acts of racketeering activity.

16 Thus, the dismissal of Socheat's RICO Claim should be entered without leave  
17 to amend because she cannot, by amendment, create two predicate acts from  
18 Defendants' alleged single action.

19 **c. Socheat Cannot Rely On An Alleged Lesser Included Offense to**  
20 **Create the Requisite Multiple Predicates.**

21 Socheat cannot rely on the lesser offenses of alleged trafficking and  
22 withholding her passport, or otherwise, to establish two or more predicates where  
23 Socheat has otherwise alleged that said acts were necessary to implementing the  
24 forced labor of Socheat. (SAC, ¶ 285.) (*United States v. Biaggi* (2nd Cir. 1990) 909  
25 F.2d 662, cert. denied, 499 U.S. 904 (1991) (bribery and accepting a gratuity (a  
26 lesser included offense of bribery) – both based on the same act (a promise of future  
27 employment) – constitute a single predicate act.)

28 Dismissal of the RICO Claim is, therefore, proper. (F.R.C.P. 12(b)(6).)

1                   **2. Socheat Has Also Failed To Allege Related Predicate Acts Extending**  
2                   **Over A Substantial Period of Time Or As Part of An Ongoing Business.**

3           As the U.S. Supreme Court noted in *H.J. Inc.*, in defining the word “pattern”  
4 contained in the key phrase “pattern of racketeering activity” of 18 U.S.C. § 1962,  
5 **“the word ‘pattern’ here would be taken to require more than just a**  
6 **multiplicity of racketeering predicates.”** (Emphasis added.)

7           In this regard, “[w]hile two acts are necessary, they may not be sufficient.”  
8 (Citations)” (*H.J. Inc.*, *supra*, 492 U.S. at 237.) “Section 1961(5) ... assumes that  
9 there is something to a RICO pattern beyond simply the number of predicate acts  
10 involved.” “[P]roof of two acts of racketeering activity, without more does not  
11 establish a pattern” (Citations)” (*Id.*)

12           “To establish a RICO pattern it must also be shown that the predicates  
13 themselves amount to, or that they otherwise constitute a threat of, continuing  
14 racketeering activity.” (*HJ Inc.*, *supra*, 492 U.S. at 240-241.)

15           “Continuity” refers either “to a closed period of repeated conduct, or to past  
16 conduct that by its nature projects into the future with a threat of repetition.” (*Id.*  
17 241) A closed period may be proved by **“a series of related predicates** extending  
18 over a substantial period of time.” (*Id.* 241) (Emphasis added.) While, “the threat of  
19 continuity may be established by showing that the **predicate acts or offenses** are  
20 part of an ongoing entity's regular way of doing business.” (*Id.* 241) (Emphasis  
21 added.)

22           The Second Circuit in *United States v. Kaplan* (2nd Cir. 1989) 886 F.2d 536,  
23 542, held that continuity or threat of continuity can be shown by either related  
24 predicate acts extending over a long time period or by reference to external facts that  
25 indicate that the defendant’s activities are **not “isolated” or “sporadic.”** (*Kaplan*,  
26 *supra*, 886 F.2d at 542-43.) Here, Socheat has alleged an isolated act or episode of  
27 forced labor, not multiple predicates, over a period of approximately twenty-two  
28

1 months, with a six-month break to be with her husband Yam. (SAC, ¶ 285.) Said  
2 allegations do not establish the requisite pattern of racketeering activity.

3 Nor, is it evident from the pleading that the alleged racketeering acts are part  
4 of the Defendants' regular way of doing business or part of a long-term association  
5 that exists for criminal purposes.

6 Dismissal of Plaintiff's RICO Claim on this ground is, therefore, proper.  
7 (F.R.C.P. 12(b)(6).)

8 **3. The RICO Claim Is Limited to A Single Alleged Victim.**

9 Socheat's RICO allegations are limited to a single alleged victim, namely,  
10 Socheat.

11 A RICO violation contemplates multiple victims. Other courts have  
12 considered the number of alleged RICO victims in determining whether a RICO  
13 claim has been plead and/or established. (See *Jones v. Lampe* (7th Cir. 1988) 845  
14 F.2d 755, 757 (“(1) the number and variety of predicate acts and the length of time  
15 over which they were committed; (2) **the number of victims**; (3) the presence of  
16 separate schemes; and (4) the occurrence of distinct injuries” (Emphasis added));  
17 *Barticheck v. Fidelity Union Bank/First Nat'l State* (3rd Cir. 1987) 832 F.2d 36, 39  
18 (“the number of unlawful acts, the length of time over which the acts were  
19 committed, the similarity of the acts, **the number of victims**, the number of  
20 perpetrators, and the character of the unlawful activity” (Emphasis added)); see also  
21 *Airlines Reporting Corporation v. AERO Voyagers, Inc.* (S.D.N.Y. 1989) 721  
22 F.Supp. 579.) (Emphasis Added.)

23 In *Jones v. Lampe, supra*, 845 F.2d at 757, the court held “**multiple acts of**  
24 **mail fraud in furtherance of a single episode of fraud involving one victim and**  
25 **relating to one basic transaction cannot constitute the necessary pattern.**”  
26 (Emphasis added.)

27 In *Doe I v. Reddy*, 2003 U.S. Dist. LEXIS 26120, the United States District  
28 Court of California, Northern District, held the plaintiffs had sufficiently alleged a

1 RICO claim based on multiple episodes of immigration fraud and hundreds of  
2 victims. Similarly, in *Abraham v. Singh* (5th Cir. 2007) 480 F.3d 351, the court held  
3 the laborers sufficiently alleged a RICO claim based on an alleged “pattern of  
4 racketeering activity” which included multiple episodes of immigration fraud  
5 involving numerous victims.

6 Dismissal of the RICO Claim for failure to plead multiple predicates  
7 involving multiple victims over a substantial period of time is, therefore, proper.

8 **4. Soheat Has Failed To Allege A Conspiracy To Violate 18 U.S.C. §**  
9 **1962(c) Or Otherwise.**

10 Since Soheat has not sufficiently alleged the essential elements of a RICO  
11 claim under 18 U.S.C. § 1962(c), Soheat’s conspiracy claim under 18 U.S.C. §  
12 1962(d) for alleged violation of 18 U.S.C. § 1962(c) also fails as a matter of law.

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1 **IV. CONCLUSION**

2 For the reasons stated herein, the Fourth Claim for Relief of Unlawful  
3 Conduct Re: Documents should be dismissed as to all Defendants except Sin, and  
4 the Seventeenth Claim for Relief of False Imprisonment, the Twenty-Second Claim  
5 of Relief for Negligent Infliction of Emotional Distress, and the Twenty-Ninth  
6 Claim for Relief of Violation of Federal Racketeer Influenced and Corrupt  
7 Organizations Act, should be dismissed as to all Defendants. Further, the order of  
8 dismissal should be entered without leave to amend because, as established herein,  
9 the identified pleading defects cannot be cured by amendment.

10  
11 DATED: September 19, 2017

Respectfully Submitted,  
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